IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

OP.No. 20658 of 2001(H)

PETITIONER:

MOHANAN. P.K., S/O. KUNHAMBU NAMBIAR,
CHITTOTH HOUSE, CHERUTHAZHAM,
P.O. MANDOOR, KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS:

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1. C. YOUSEF HAJI, PROPRIETOR, ASLAM INDUSTRIES, RESIDING AT C.P. HOUSE, P.O. EZHOME, KANNUR DISTRICT.
2. C. KUNHAMMED, MANAGING PARTNER, ASLAM INDUSTRIES, PAYANGADI.
3. C. ABDUL KHADER HAJI, C.P. HOUSE, PAYANGADI, POPAYANGADI, KANNUR DISTRICT.
4. C.P. SIDDIQUE, ZUHARA MANZIL, TRICHAMBARAM, TALIPARAMBA P.O. KANNUR DISTRICT.
5. C.P. SARAKUTTY, FOUZIYA MANZIL, EZHOME, P.O. EZHOME, KANNUR DISTRICT.
6. C. LUKMAN, FOUSIYZ MANZIL, EZHOME, P.O. EZHOME, KANNUR DISTRICT.
7. COMMISSIONER FOR WORKMEN'S COMPENSATION AND DEPUTY LABOUR COMMISSIONER, KANNUR.

BY ADV. SRI.P.V.SURENDRANATH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.20658/2001.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE REPLY SENT BY ASST. REGIONAL DIRECTOR, ESI CORPORATION TO THE PETITIONER DATED 11.10.1996.

EXT.P2: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE COMMISSINER FOR WORKMEN'S COMPENSATION AND DEPUTY LABOUR COMMISSIONER, KANNUR.

EXT.P3: TRUE COPY OF THE AFFIDAVIT BEFORE THE WORKMEN'S COMPENSATION AND DEPUTY LABOUR COMMISSINER, KANNUR BY THE PETITIONER.

EXT.P4: TRUE COPY OF THE ORDER OF THE LEARNED COMMISSIONER FOR WORKMEN'S COMMISSIONER AND DEPUTY LABOUR COMMISSIONER, KANNUR IN I.A.2/2001 IN W.C.NO.223/97.

/TRUE COPY/

PA TO JUDGE.

S.SIRI JAGAN,J.

O.P.NO.20658 OF 2001

JUDGMENT

09.03.2007

S. SIRI JAGAN, J.

O.P.NO.20658 OF 2001

DATED THIS THE 9th DAY OF MARCH, 2007

JUDGMENT

An injured workman in W.C.C.No.223/97 on the files of Commissioner for Workmen's Compensation, Kannur is the petitioner herein. He is aggrieved by Ext.P4 order passed by the Commissioner in I.A.No.2/01 in that W.C.C. The said I.A. was a petition for condonation of delay in filing the Workmen's Compensation Case. The accident occurred on 7.5.90. The petitioner filed the claim before the Workmen's Compensation Commissioner only on 18.12.97. Ext.P3 is the affidavit and application submitted by the petitioner seeking condonation of delay in filing the claim.

2. The contention of the petitioner is that believing that the establishment of his employer is covered under the E.S.I. Act, he was prosecuting his claim before the E.S.I. Corporation. In respect of the liability of the employer under the E.S.I. Act, there was an insurance case pending before the Insurance Court as I.C. No.4/91, the final decision in which came only on 29.10.96. The Workmen's Compensation Commissioner in Ext.P4 found that even thereafter there was a delay of one year, one month and twenty days for which

there is no sufficient explanation offered by the petitioner. It is under the above circumstances, Ext.P4 order has been passed dismissing the petitioner's application for condonation of delay in filing the Workmen's compensation claim. Ext.P4 order is under challenge in this original petition.

3. Learned counsel for the respondents 1 to 6 who are the employers would contend that there is no merit in the contentions of the petitioner. He would submit that there is absolutely no explanation for the undue delay of more than seven years in filing the claim before the Workmen's compensation Commissioner. He would also submit that the pendency of the case filed by the employer before the Insurance Court is not a good ground for condoning the inordinate delay.

4. I have considered the rival contentions in detail. Even the Workmen's Compensation Commissioner has agreed with the petitioner that till the disposal of the insurance case by Insurance Court on 29.10.96, the petitioner had sufficient reason for not filing the claim in time. The Workmen's Compensation Commissioner found fault with the petitioner only for explaining the balance period of one year, one month and twenty days. I am of opinion that in the matter of condonation of delay in Workmen's Compensation cases a strict view as applicable to civil litigation need not be adopted . The petitioner is a poor workman who had suffered serious injuries in the accident alleged to be arising out of and in the

course of his employment . He is alleged to have lost part of his fingers in the accident which is the basis of Workmen's Compensation claim. That being so, a lenient attitude should be taken in favour of the petitioner in the matter of condonation of delay. I

5. In the above circumstances, I quash Ext.P4 and allow I.A.No.2/01 in W.C.C.No.223/97 before the Commissioner for Workmen's Compensation. The delay in filing the claim would stand condoned. There would be a further direction to the Commissioner for Workmen's Compensation to take back W.C.C.No.223/97 on file and dispose of the same on merits in accordance with law after affording opportunity to adduce evidence to both parties. Both parties would be entitled to raise all the contentions available to them under law before the Workmen's Compensation Commissioner on merits of the case in the course of adjudication of the Workmen's Compensation claim. Since the matter is pretty old the Commissioner shall see that the case is disposed of expeditiously at any rate within six months from the date of receipt of a copy of the judgment and the parties shall co-operate with him for such expeditious disposal.

S. SIRI JAGAN, JUDGE

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